

## REMARKS

Claims 14-21, 26-28 and 33 were pending in the application with claims 14 and 28 being the independent claims. Claims 14, 19 and 28 are currently amended and claims 35-37 are newly added. Support for these claim amendments and newly added claims can be found in the specification, claims, and drawings as originally filed. Reconsideration of presently pending claims is respectfully requested in light of the above amendments and the following remarks.

### Examiner Interview of March 7, 2008

Applicant appreciates the courtesy offered by the Examiner and the opportunity to interview the Examiner. Based on this phone interview, Applicant understands more fully how the Office Action interprets the Zucherman reference.

### Compliance with 35 U.S.C. § 101

Claim 19 has been amended. Accordingly, Applicant respectfully requests withdrawal of this rejection.

### Compliance with 35 U.S.C. §102

#### U.S. Patent Publication No. 2001/0016743 to Zucherman

Claims 14-21, 26-28 and 33 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Publication No. 2001/0016743 to Zucherman et al. (“Zucherman”). The PTO provides in MPEP § 2131 that “[t]o anticipate a claim, the reference must teach *every* element of the claim . . . .” Therefore, with respect to these claims, to sustain this rejection Zucherman must teach each and every element of the claims as amended. Applicant respectfully traverses this rejection on the grounds that Zucherman does not teach each and every limitation of the rejected claims in the manner recited.

Claim 14 requires:

an interspinous wedge configured to be inserted between  
the spinous processes of two vertebrae, wherein the wedge  
includes:

first and second opposing ends, each shaped to engage with and to receive the respective spinous processes,  
first and second lateral sides extending from the first end to the second end, and  
at least one elastically deformable zone;  
two compressive lateral elements disposed on either lateral side of the wedge in a longitudinal direction, wherein the compressive lateral elements are deformable between releasing positions and compressive positions; and  
two lateral transmission elements disposed between the compressive lateral elements and the wedge, and configured to selectively press against the lateral sides of the wedge substantially midway between the first and second ends in the transverse direction near the elastically deformable zone,  
wherein the lateral transmission elements are bosses disposed between the compressive lateral elements and the wedge.

Zucherman discloses an interspinous wedge with opposing saddles 506, 508, 522, 524, 532 and 534, as shown in Figs. 64-66, reproduced below. The saddles are designed to receive and cradle adjacent spinous processes. (Paragraph [0104]). Tethers 536 and 538 are disclosed in the embodiment shown in Fig. 66 for the purpose of guiding “motion of the spinous processes relative to each other . . .” by keeping the implant saddles in contact with the spinous processes. (Paragraph [0106]).

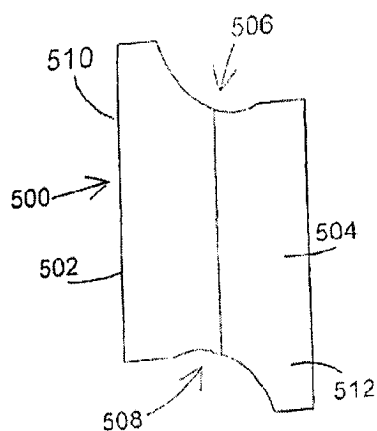


Fig. 64

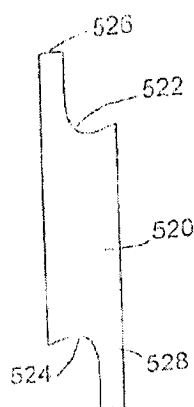


Fig. 65

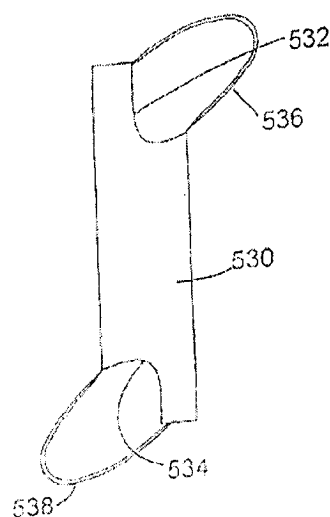


Fig. 66

In contrast, claim 14 recites “two lateral transmission elements disposed between the compressive lateral elements and the wedge, and configured to selectively press against the lateral sides of the wedge substantially midway between the first and second ends in the transverse direction near the elastically deformable zone.”

If the ends of the device shown in Fig. 66 of Zucherman were the lateral transmission elements and the tethers were the compressive lateral elements as suggested by the Examiner during the Examiner Interview, then the lateral transmission elements would not be “configured to selectively press against the lateral sides of the wedge substantially midway between the first and second ends,” as recited in claim 14. This is because the ends in Fig. 66 are not disposed along “lateral sides” as claimed. Thus, Zucherman does not teach each and every limitation of claim 14 and this rejection should be withdrawn.

Claim 28 requires a similar limitation:

first and second lateral transmission elements disposed respectively between the first compressive lateral element and the wedge and the second compressive lateral element and the wedge, the first and second lateral transmission elements being adapted to press against the lateral sides of the wedge substantially midway between the first and second ends in the transverse direction in response to forces applied by the first and second compressive lateral elements.

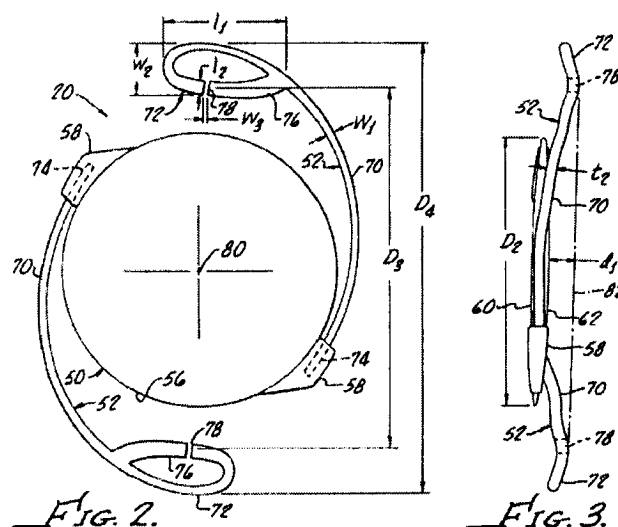
For the reasons discussed above with respect to claim 14, Zucherman fails to disclose “first and second lateral transmission elements being adapted to press against the lateral sides of the wedge substantially midway between the first and second ends in the transverse direction.” Therefore, Zucherman does not teach each and every limitation of claim 28. Applicant respectfully requests that this rejection be withdrawn and that claim 28 be allowed.

Dependent claims 15-21, 26-27 and 33 depend from and further limit independent claims 14 and 28 and therefore should be allowable over the cited reference.

U.S. Patent No. 6,152,959 to Portney

Claims 14-21, 26 and 27 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,152,959 to Portney (“Portney”). Applicant respectfully traverses this rejection on the grounds that Portney does not teach each and every limitation of the independent claims.

The Office Action states that Portney discloses “two compressive lateral elements (52) on either side of the wedge in a longitudinal direction . . .” (Office Action, page 5).



Portney discloses that elements (52) are “fixation members or haptics” which “enable accurate centration of the associated optic in the patient’s eye upon fixation of the IOL to the iris.” (Col. 3, lines 15-17; Col. 4, lines 42-49; and see Figs. 2 and 3, reproduced above).

Portney does not disclose an interspinous wedge with “first and second opposing ends, each shaped to engage with and to *receive* the respective spinous processes.” Furthermore, if Portney is rotated such that the bosses (58) would be aligned “midway between the first and second ends” as recited in claim 14, Applicant asserts that Portney would not then be “configured to selectively press against the lateral sides of the wedge substantially midway between the first and second ends in the transverse direction” as required by claim 14. Therefore, Portney does not teach each and every limitation of claim 14 and this rejection should be withdrawn.

Dependent claims 15-21, 26 and 27 depend from and further limit independent claim 14, and therefore should be allowable over the cited reference.

#### New Claims

Newly added claim 36 requires:

- an interspinous wedge having:
  - a first end with a saddle-shaped receiver sized to receive and engage a spinous process of a first and vertebra,

a second end longitudinally opposite the first end with a saddle-shaped receiver sized to receive and engage a spinous process of a second vertebra,  
an elastically deformable zone between the saddle-shaped receivers;  
a first lateral side adjacent the deformable zone,  
a second lateral side adjacent the deformable zone and opposite the first lateral side, a distance between the first and second ends being greater than a distance between the first and second lateral sides,  
first and second longitudinally extending compressive lateral elements disposed adjacent to and spaced apart from the lateral sides of the interspinous wedge, the compressive lateral elements being deformable between releasing positions and compressive positions and each being sized to extend from the first vertebra to the second vertebra and being shaped to connect to both the first vertebra and the second vertebra; and  
two lateral transmission elements respectively disposed between the compressive lateral elements and the lateral sides of the deformable zone between the saddle-shaped receivers, the two lateral transmission elements being configured to selectively increase and decrease loading against the lateral side of the wedge in the transverse direction near the elastically deformable zone when the compressive lateral elements move between the releasing and compressive positions.

Zucherman fails to disclose, for example, “first and second longitudinally extending compressive lateral elements disposed adjacent to and spaced apart from the lateral sides of the interspinous wedge” and “the compressive lateral elements . . . being sized to extend from the first vertebra to the second vertebra and being shaped to connect to both the first vertebra and the second vertebra” as required by new claim 36. Therefore, Zucherman does not teach each and every limitation of claim 36 and this claim should be allowable.

Portney also fails to disclose for example, “an interspinous wedge,” first and second ends “with a saddle-shaped receiver,” and “the compressive lateral elements . . . being sized to extend from the first vertebra to the second vertebra and being shaped to connect to both the first vertebra and the second vertebra,” as required by new claim 36. Therefore, Portney does not teach each and every limitation of claim 36 and this claim should be allowable over Portney.

New claims 35 and 37 depend from claims 28 and 36 respectfully and also should be allowable over the cited references.

CONCLUSION

For at least the reasons set forth above, Applicant submits that the pending claims 14-21, 26-28, 33 and 35-37 should be in condition for allowance. Accordingly, Applicant respectfully requests that the Examiner withdraw the outstanding objections and rejections and issue a formal notice of allowance.

If the Examiner believes a telephone conversation would be useful for advancing prosecution of this application, he is invited to telephone the undersigned at 972-739-6969.

Please grant any extension of time required to enter this response and charge any additional required fees to our Deposit Account No. 08-1394.

Respectfully submitted,



Dustin T. Johnson

Registration No. 47,684

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HAYNES AND BOONE, LLP  
901 Main Street, Suite 3100  
Dallas, Texas 75202 3789  
Telephone: 972/739-6969  
Facsimile: 214/651-5940

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Diane Sutton